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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,628	03/06/2002	Nathaniel L. Wilganowski	LEX-0314-USA	9673

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LEXICON GENETICS INCORPORATED
8800 TECHNOLOGY FOREST PLACE
THE WOODLANDS, TX 77381-1160

EXAMINER

NICHOLS, CHRISTOPHER J

ART UNIT	PAPER NUMBER
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1647

DATE MAILED: 04/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/091,628

Applicant(s)

WILGANOWSKI ET AL.

Examiner

Christopher Nichols, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-10 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-3, drawn to an isolated nucleic acid molecule comprising **SEQ ID NO: 1**, classified in class 536, subclass 23.1.
 - II. Claims 4 and 5, drawn to a substantially isolated protein having the transporter activity of the protein shown in **SEQ ID NO: 2**, classified in class 530, subclass 300.
 - III. Claims 6-8, drawn to an isolated nucleic acid molecule comprising **SEQ ID NO: 4**, classified in class 536, subclass 23.1.
 - IV. Claims 9 and 10, drawn to a substantially isolated protein having the transporter activity of the protein shown in **SEQ ID NO: 5**, classified in class 530, subclass 300.
2. The inventions are distinct, each from the other because of the following reasons:
3. Although there are no provisions under the section for "Relationship of Inventions" in M.P.E.P. § 806.05 for inventive groups that are directed to different products, restriction is deemed to be proper because these products constitute patentably distinct inventions for the following reasons. Inventions I, II, III, and IV are directed to products that are distinct both physically and functionally, are not required one for the other, and are therefore patentably distinct. The nucleic acid molecule of Invention I can be used other than to make the protein of Inventions II and IV, such in gene therapy or as a probe in nucleic acid hybridization assays. The

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nucleic acid molecule of Invention I can be prepared by processes which are materially different from nucleic acid molecule of Invention III, such as by chemical synthesis, or by isolation and purification from natural sources. The nucleic acid molecule of Invention III can be used other than to make the protein of Inventions II and IV, such in gene therapy or as a probe in nucleic acid hybridization assays. The nucleic acid molecule of Invention III can be prepared by processes which are materially different from nucleic acid molecule of Invention I, such as by chemical synthesis, or by isolation and purification from natural sources. The protein of Invention II can be prepared by processes which are materially different from isolated nucleic acid molecules of Inventions I and III, such as by chemical synthesis, or by isolation and purification from natural sources. The protein of Invention II is independent and distinct from the protein of Invention IV because it is not required to make or use the protein of Invention II. The protein of Invention IV can be prepared by processes which are materially different from isolated nucleic acid molecules of Inventions I and III, such as by chemical synthesis, or by isolation and purification from natural sources. The protein of Invention IV is independent and distinct from the protein of Invention II because it is not required to make or use the protein of Invention IV.

4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, separate search requirements, and/or different classification, restriction for examination purposes as indicated is proper.

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6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Christopher James Nichols, Ph.D.** whose telephone number is 703-305-3955. The examiner can normally be reached on Monday through Friday, 8:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Gary Kunz, Ph.D.** can be reached on 703-308-4623. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9307 for After Final communications. The fax phone numbers for the customer service center is 703-872-9305

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

CJN
April 21, 2003



**ELIZABETH KEMMERER
PRIMARY EXAMINER**